

# OFFICE OF THE ATTORNEY GENERAL

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Honorable Gerald O. Dial  
Member, Alabama State Senate  
District No. 13  
P. O. Box 248  
Lineville, AL 36266

Petroleum Products - Licenses  
and Permits - Fees - Motor  
Fuels

Diesel fuel not subject to  
excise tax under Code of Ala-  
bama 1975, § 40-17-1, et  
seq., is subject to the Whole-  
sale Oil License Tax levied  
pursuant to Code of Alabama  
1975, § 40-17-174.

Dear Senator Dial:

This opinion is issued in response to your request for  
an opinion from the Attorney General.

## QUESTION

Is diesel fuel subject to the tax  
imposed pursuant to Code of Alabama 1975,  
§ 40-17-174, commonly known as the "Whole-  
sale Oil License Fee?"

## FACTS AND ANALYSIS

Code of Alabama 1975, § 40-17-174, imposes a tax upon  
"wholesalers dealing in illuminating, lubricating or fuel  
oils." The statute specifically levies a tax upon:

"Each person, firm, corporation, or agency selling illuminating, lubricating or fuel oils at wholesale, that is to say in quantities of 25 gallons or more, shall pay to the Department of Revenue for the use of the state, within two weeks from the beginning of the fiscal year, the sum of one half of one percent on his gross sales for the preceding fiscal year, and such payment to the Department of Revenue shall be accompanied by a sworn statement verified by the person having knowledge of the facts showing the amount of the gross sales of such oils sold in the state during the preceding fiscal year. . . ."  
(Emphasis supplied.)

The three (3) "products" identified in § 40-17-174 are "illuminating oils," "lubricating oils," and "fuel oils." "Lubricating oils" is defined in § 40-17-170. The definition of "lubricating oil" states, inter alia:

". . . provided, that nothing contained in this article shall be held to apply to those products known commercially as "kerosene oil," "fuel oil," or "crude oil." (Emphasis added.)

"This article," of course, is Article 4 which contains § 40-17-174, which levies the Wholesale Oil License Fee. Consequently, even if "fuel oils" was accepted to include diesel fuel, § 40-17-170(1) appears to exclude "fuel oils" from any and all applications of Article 4 including the Wholesale Oil License Fee.

If the Legislature did not define "fuel oils" to expressly include diesel fuel because it believed such term as a practical matter would be understood in the industry to include diesel fuel, such assumption is insufficient and "fuel oils" is then unreasonably vague.

There is a line of cases which stand for the proposition that the words of a statute not therein specifically defined are to be given their meaning in common, ordinary usage at the time the statute was enacted. Morgan County Commission v. Powell, 293 So.2d 830 (1974). Section 40-17-174 originated as Schedule 138.3 in Section 348, Chapter 1 of Article

XIII of Act No. 194 of the 1935 legislative session. In Schedule 156, Chapter 4, Article XIII, of the same Act we find the following:

"As used in this Chapter, the term 'Gasoline' shall include gasoline, naptha and other liquid motor fuels or any device or substitute therefor, commonly used in internal combustion engines; provided, however, that nothing in this Chapter shall be held to apply to those products known commercially as 'kerosene oil', 'fuel oil', or 'crude oil' commonly used for lighting, heating or industrial purposes. . . ." (Emphasis supplied.)

Thus, it may be argued that, as used in the Act, the term "fuel oil" did not include "diesel fuel."

Diesel fuel or diesel oil is clearly ". . . liquid motor fuel . . . commonly used in internal combustion engines . . ." and is not "fuel oil" within the contemplation of that term as used in Schedule 156.

We note that Code of Alabama 1975, § 40-17-2, levies a 13 cent per gallon excise tax upon the "selling, using or consuming, distributing, storing, withdrawing from storage in this state of any motor fuel for use in the operation of any motor vehicle upon the highways of this state. . . ." Section 40-17-2 also provides in pertinent part:

". . . provided further, that motor fuel subject to the excise tax levied by this article shall not be subject to any other excise tax levied by the state."

Motor fuel includes diesel fuel. Section 40-17-1, Code. Thus, if the excise tax on diesel fuel levied pursuant to the provisions of § 40-17-2 is paid, then such diesel fuel clearly is not subject to the excise tax levied pursuant to the provisions of § 40-17-174.

We also note that if the excise tax of § 40-17-1, et seq., is not paid, then the sale of diesel fuel used for off-road purposes would be subject to the Alabama Sales and Use Tax. Section 40-23-1, et seq., Code.

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Against the proposition discussed above, we have a long-standing and unchallenged interpretation of the agency and officials charged with administering the revenue statutes to the effect that § 40-17-174 applies to diesel oil. Such an interpretation should be given favorable consideration. East Brewton Materials, Inc. v. State Department of Revenue, 233 So.2d 751 (1970). Accordingly, we are constrained to reach the conclusion that diesel fuel not used in the operation of a motor vehicle upon the highways of Alabama is subject to the tax levied in § 40-17-174.

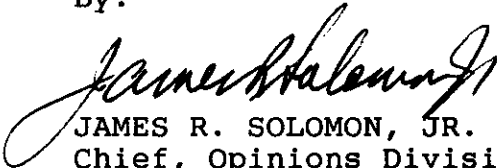
#### CONCLUSION

Diesel fuel not used in the operation of a motor vehicle upon the highways of Alabama is subject to the Alabama Wholesale Oil Dealers License Tax imposed pursuant to the provisions of Code of Alabama 1975, § 40-17-174.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Philip C. Davis of my staff.

Sincerely,

JEFF SESSIONS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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